Respondents next cite *Bruscianelli* v. *Triemstra*, 2000 WL 1100439 (N.D. Ill. Aug. 4, 2000). Br. 16. In that case, the court simply held that investors lacked standing to vacate an NASD arbitration award, which had expunged their complaint from the record, because they were not concretely injured by the expungement. *Id.* at *3. The court rejected the investors' contention that they had a right to raise arguments on behalf of NASD, explaining that NASD could have argued on its own behalf simply by intervening in the district court, precisely what Jarnis sought here. *Id.* at *4.

In *Maul* v. *Aznavoorian*, 1997 WL 16313 (N.D. Cal. Jan. 9, 1997) (Br. 16), the award did not impose financial obligations on a third party. The arbitrator found for an investor on her claim against her broker and, as a remedy, allowed her to sell her limited partnership interest to the broker. The broker moved to vacate, arguing that the award would require the general partner to accept the broker as a limited partner. The court rejected that contention because the broker was "already a limited partner." Hence, the award did not result in a "material alteration in rights and obligations" of a third party, an outcome "that has required courts to vacate arbitration awards." *Id.* at *3. Here, in contrast, the award plainly had a material impact on Jarnis by burdening it with millions of dollars in obligations.

In *Productos Mercantiles e Industriales, S.A.* v. *Faberge USA, Inc.*, 1993 WL 362391, at *8 (S.D.N.Y. Sept. 14, 1993), the alleged nonparty was actually the arbitral respondent's successor and thus, unlike Jarnis here, was legally the same entity as the respondent. Further, the claimant did not name the successor because it "did not know that [the respondent] was no longer a viable company." *Id.* at *8 n.12. Here, it is uncontroverted that

the arbitral claimants knew all along that Jarnis was a viable and legally independent entity. They chose not to seek any relief against it, and the arbitrator therefore exceeded his authority by imposing such relief.

Finally, respondents' citation to an earlier Seventh Circuit case, *Moseley, Hallgarten, Estabrook & Weeden, Inc.* v. *Ellis*, 849 F.2d 264, 268-269 (7th Cir. 1988) (Br. 18), provides them no support. In that case, a party objected to arbitral jurisdiction only after it participated in the arbitration and lost, thereby waiving its objection. Here, in contrast, Jarnis was not asked to arbitrate, did not participate in the arbitration, and was not notified that an award against it was even on the table until the tail-end of the arbitration. Jarnis cannot have waived a right that it was denied a meaningful opportunity to exercise.

II. Petitioner Had A Right To Intervene To Seek Vacatur Of The Award Issued Against It.

1. Respondents' view that the denial of Jarnis' right to intervene is not a "compelling enough" issue for this Court's review is misguided. Br. 19. Because Jarnis was not a party but rather a proposed intervenor in the district court, it *must* seek review of the rejection of its motion to intervene to have standing to raise the primary arbitration law issue. *UAW* v. *Scofield*, 382 U.S. 205, 209 (1965) (denial of intervention motion gave petitioner standing to seek certiorari review of the merits); *Izumi* v. *U.S. Philips Corp.*, 510 U.S. 27, 30 (1993). Further, the ruling below—that an entity burdened with financial obligations by an arbitrator has no right to intervene in the judicial review proceeding—has created confusion on an important issue of federal civil procedure that this Court should dispel.

2. Respondents contend that Jarnis waited to seek intervention for "six years after the litigation had

commenced." Br. 4; see Br. 20. By "litigation," respondents are referring to the initial lawsuit between Jarnis partners and other entities *prior* to the arbitration. At that time, Jarnis had no reason to think that it was on the hook for significant financial obligations, especially since none of the parties had requested such relief. The only litigation in which Jarnis had any reason to intervene was the judicial review proceeding *after* the arbitration. As explained in the petition (at 16), Jarnis moved to intervene promptly in the judicial review proceeding.

Respondents also contend that Jarnis could have intervened in the arbitration. Br. 20-21. But they offer no reason why Jarnis would intervene in an arbitration in which it was facing no claims. The point is not whether Jarnis knew of the arbitration (Br. 20-21); plainly, it did. But it had no reason to expect that it would be the target of an arbitration award where no one was seeking any relief against it. Hence, there was no issue as to whether any party adequately represented its interests. Indeed, by the time Jarnis learned that it had interests at stake, the evidentiary proceeding was over. Pet. 17. It would have been futile for Jarnis to intervene at that point.

3. Respondents contend that Jarnis was adequately represented in the district court proceeding. Br. 21-22. But how could Jarnis be adequately represented by parties that, as the district court ruled (Pet. App. 23a), lacked standing to challenge the obligations imposed on Jarnis? And even if they had standing, the district court defendants were not responsible for the full amounts imposed on Jarnis, and half were not even Jarnis partners. See Pet. 18. Thus, their interests and those of Jarnis conflicted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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JUNE 2005